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MEMORANDUM

Don Eklund

King County Auditor

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Seattle, WA 98104-3272

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TTY/TDD 296-1024

DATE: June 8, 1999

TO: Metropolitan King County Councilmembers

FROM: Don Eklund, County Auditor

SUBJECT: Special Study – East Lake Sammamish Trail

Attached for your review is the East Lake Sammamish Trail study report. The objectives of the review were to determine whether the purchase of the East Lake Sammamish Trail followed real property acquisition procedures established by the county and whether the purchase price was supported by independent appraisals.

The general conclusion of the study was that appropriate property acquisition procedures appear to have been followed and that property appraisals were conducted professionally and independently.

The Executive Response, included in Appendix 2, indicates agreement with our conclusion.

The Auditor's Office appreciates the cooperation received from the Department of Parks and Recreation and the Department of Natural Resources, Water, and Land Resources Division.

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SPECIAL STUDY
EAST LAKE SAMMAMISH TRAIL

Presented to
the Metropolitan King County Council
by the
County Auditor's Office

Don Eklund, King County Auditor
Bobby Buyco, Senior Management Auditor

Report No. 99-02

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Abbreviations

BNSF	Burlington Northern & Santa Fe Railroad Company
OSS	Resource Lands and Open Space Section, Water and Land Resources Division, Department of Natural Resources
STB	Surface Transportation Board
TLC	The Land Conservancy of Seattle & King County
USPAP	Uniform Standards of Professional Appraisal Practice
WSDOT	Washington State Department of Transportation

REPORT SUMMARY

Introduction

The East Lake Sammamish Trail study was requested by the Metropolitan King County Council and was included in the Auditor's Office 1999 work program.

Background

In 1998, King County purchased a closed rail line along Lake Sammamish from The Land Conservancy of Seattle and King County (TLC)¹ for \$2,988,500 million. TLC had purchased the rail line from Burlington Northern/Santa Fe (BNSF) in 1997 for \$1.5 million. The rail line stretches 11.61 miles along the east shore of Lake Sammamish with a total land area of about 140 acres. The county plans to develop this property into a regional trail linking Redmond and Issaquah.

Study Objectives

The objective of the study is to determine whether:

- The purchase of the East Lake Sammamish Trail followed real property acquisition procedures established by the county, and
- The purchase price was supported by independent appraisals.

Study Conclusion

The general conclusion of the study was that appropriate property acquisition procedures appear to have been followed and that property appraisals were conducted professionally and independently.

¹ The Land Conservancy of Seattle and King County is a non-profit Washington State corporation.

AUDITOR'S MANDATE

The East Lake Sammamish Trail acquisition process was reviewed by the County Auditor's Office pursuant to Section 250 of the King County Home Rule Charter and Chapter 2.20 of the King County Code.

1

INTRODUCTION AND BACKGROUND

The East Lake Sammamish Trail study was requested by the Metropolitan King County Council and was included in the Auditor's Office 1999 work program.

Background

In 1998, King County purchased a closed rail line along Lake Sammamish from The Land Conservancy of Seattle and King County (TLC)² for \$2,988,500 million. TLC had purchased the rail line from Burlington Northern/Santa Fe (BNSF) in 1997 for \$1.5 million. The rail line stretches 11.61 miles along the east shore of Lake Sammamish. The total area of the rail right-of-way was estimated by the appraiser to be over 140 acres.

The acquisition was made possible by federal rail banking legislation. This legislation allows local trail groups or public agencies like King County to purchase closed railroad right-of-way and use it for trails or utility routes. However, it includes a provision that the right-of-way be preserved for conversion back to railroad use if a viable operating proposal is developed.

The county plans to develop this property into a regional trail linking Redmond and Issaquah. The East Lake Sammamish Trail will form a crucial link between the Burke-Gilman/Sammamish River Trail that runs from the Ballard neighborhood in Seattle to Marymoor Park, and the Mountains to Sound Greenway which parallels Interstate 90.

² The Land Conservancy of Seattle and King County is a non-profit Washington State corporation.

Study Objectives

The objective of the study is to determine whether:

- The purchase of the East Lake Sammamish Trail followed real property acquisition procedures established by the county, and
- The purchase price was supported by independent appraisals.

**Study Scope and
Methodology**

The study scope is limited to the above stated objectives. The study methodology included review of available documents, interviews with appropriate personnel, analysis of available accounting and management information, and observation and evaluation of related activities. The study placed heavy reliance on agency-provided documents, and thus we do not attest to the accuracy of information provided to us.

2 FINDINGS AND RECOMMENDATIONS

The following describes study findings and recommendations regarding the acquisition of the Burlington Northern/Santa Fe (BNSF) rail right-of-way for the East Lake Sammamish Trail by King County from The Land Conservancy of Seattle and King County.

FINDING 1

APPROPRIATE PROPERTY ACQUISITION PROCEDURES APPEAR TO HAVE BEEN FOLLOWED.

Acquisition Procedures

Open space and conservation easement acquisition is guided by King County policies and procedures (PAR 1-17) enacted on June 15, 1993.³ The policies and procedures were established to meet the directives of King County Ordinances 9444 and 9071.

Although specific procedures are not detailed in the above document, the definitions and policies stated provide guidance as to the intent of PAR 1-17. A policy is defined as a “plan or course of action, as of a government, political party, or business, intended to influence and determine decisions, actions, and other matters.” Alternatively, a policy is also described as a “course of action, guiding principle, or procedure considered expedient, prudent, or advantageous.”⁴ Thus, we use relevant and stated policies and definitions in our evaluation.

³ See Appendix 1 for copy of Acquisition Procedures.

⁴ *The American Heritage® Dictionary of the English Language, Third Edition* copyright © 1992 by Houghton Mifflin Company. Electronic version licensed from INSO Corporation; further reproduction and distribution restricted in accordance with the Copyright Law of the United States. All rights reserved.

To evaluate compliance to established acquisition procedures, we considered the following questions which were derived from the Acquisition Procedures document.

Question 1 Was the amount paid for the subject property “just compensation”? (5.5)⁵

Just compensation is defined as “An amount of compensation as determined by an appraisal or decision of a court, to be received by a party for the taking of his property.” The appraisal of the property is discussed in Finding 2.

Auditor Conclusion

While the price paid for the property is below the appraised valuation, the price paid appears to be just compensation for the property. The parties involved have agreed upon the price. In addition, the BNSF may have received a significant tax benefit from the sale. TLC, on the other hand, was able to recover costs it incurred in facilitating the transaction. King County would not have been able to acquire the rights to the property without TLC.

Question 2 Does the appraiser hold a valid certificate issued to him/her for general real estate appraisals under the requirements set forth in RCW 18.140 and hold designations of SRPA, SRA, or SR/WA? (5.6)

Auditor Conclusion

King County contracted with Bruce C. Allen to appraise the BNSF property. Mr. Allen, in the qualifications section of his appraisal report, states that he obtained MAI and SRPA designations in 1972, and is a certified (appraiser) in the state of Washington. The state certification number and expiration data is included in the appraisal report. Thus, it appears that Mr. Allen held a valid certificate for general real estate appraisals and held appropriate designations.

⁵ Numbers in parentheses after the questions refer to sections of King County Acquisition Procedures included as Appendix 1.

Question 3 Was the appraisal report prepared in accordance with the Uniform Standards of Appraisal Practice? (5.7)

The appraisal report by Bruce C. Allen and Associates, Inc. included a statement that the report was intended to comply with the reporting requirements set forth under Standards Rule 2.2(b) of the Uniform Standards of Professional Appraisal Practice.

Specific content requirements are as follows:

- The definition of value to be applied is included in the “Scope of the Appraisal” section. What is valued is 11.61 miles of the BNSF corridor. The highest and best use of the corridor is considered to be for assemblage with adjoining property owners and not for continued railroad use. Track improvements were not valued. The valuation involved application of the Sales Comparison Approach and where appropriate the Development Approach.
- The estimate and effective date of the valuation is as of July 15, 1997 (cover letter and page 32 of the appraisal).
- The appraiser’s signature and certifications and limiting conditions are included in the appraisal report (cover letter and page ii of the appraisal).
- Description of the property and rights being appraised are included in the appraisal report (pages 1-12 of the appraisal).
- General and specific jurisdiction to support the value estimate, according to the Open Space Section, means the use of comparable sales within the area being appraised. Comparable sales were used by Bruce Allen in the appraisal of the subject property.
- Consideration of each of the three approaches and reconciliation was not appropriate for the subject property. Instead, the appraiser employed a combination of the Sales Comparison Approach and the Development Approach (page 13 of the appraisal). The Sales Comparison Approach is

used as the primary valuation method in valuing the industrial, commercial, parkland and R-4 backland sections of the railway corridor. The Development Approach is used to value the undeveloped shoreline portions of the subject property.

Auditor Conclusion

The appraisal report was prepared in accordance with Uniform Standards of Professional Appraisal Practice.

Question 4 Was every reasonable effort made to acquire [the] real property expeditiously and by negotiations? (6.1)

The rail line corridor from Redmond to Issaquah has been included in King County planning documents as a trail corridor since 1971. BNSF in 1981 announced its consideration of abandoning the track segment, which served its only customer – Darigold, Inc. The city of Issaquah acquired the former BNSF depot in 1984. In 1996, service to Darigold, Inc. was discontinued.

Acquisition of the property by King County for trail development required a complicated chain of events. BNSF “ownership” of the property, estimated to total about 140 acres and about 12 miles, was in various forms. BNSF “ownership” of the property is in the form of fee simple, right-of-way deeds, adverse possession claims, and federal land grants.

Abandonment of the rail line could have resulted in a portion of the property reverting back to the original property owners. Purchase of the rail line and then petitioning the Surface Transportation Board (STB) to “rail bank” the rail corridor would allow use of the corridor for trail development. Rail banking means that the rail corridor is subject to rail use at a future date. The National Trails Act of 1983 enabled local agencies, such as

King County, to hold rail right-of-way and change its use provided that the right-of-way remains intact for future rail use.

King County, however, is not by law allowed to purchase a rail line. So, TLC purchased the rail line from BNSF and petitioned the STB to abandon the railroad and to rail bank the corridor. The STB approved the TLC petition. Because TLC now owned a rail corridor, rather than a railroad, King County was now able to purchase the rail corridor subject to the rail banking provision. That is, if at some future date the railroad would again be operational, King County must give up its rights to the corridor.

Auditor Conclusion

The way King County acquired the property involved a complex process. We believe that the steps taken met the requirements of this policy.

Question 5 **Did the appraisal of each parcel follow the “Standard Narrative Form Appraisal report” as set forth in Chapter 4 of the Washington State Department of Transportation (WSDOT) Right of Way Manual or IAC specifications for Standard Appraisal Forms (Appendix F & G, Manual #3)? (6.2)**

Auditor Conclusion

We did not, nor did we find it necessary, to review compliance to the policy.

Question 6 **Was the appraisal of each parcel reviewed by a Review Appraiser? (6.2)**

Auditor Conclusion

The appraisal was reviewed by the Office of Open Space Review Appraiser and was found to have followed accepted appraisal principles and techniques in the valuation of real property in accordance with existing state law.

Question 7 Were the appraisal, appraisal review, and negotiations for each parcel performed by three different individuals? (6.3)

Auditor Conclusion

Bruce C. Allen and Associates, Inc. appraised the property. The Office of Open Space Review Appraiser performed the appraisal review. It is not clear whether the Office of Open Space negotiated with TLC. However, the Department of Parks and Recreation Director, in preparation for purchase negotiations with TLC, requested funding appropriation in June 15, 1998. Subsequently, King County purchased the BNSF property from TLC.

Question 8 Was just compensation established before initiation of negotiations? (6.4)

Auditor Conclusion

According to TLC, it was aware that King County was ready to spend around \$4.5 million. When TLC offered to sell for \$2.9 million there was "little price negotiating". We are unable to document that just compensation was established before initiation of negotiation. However, according to the Open Space Section, although a price was not noted, TLC and the county executed an "option agreement to purchase and sell real property." The agreement basically states that TLC will sell and the county will buy the property.

Question 9 Did the Project Administrator make a reasonable effort to make personal contact with each resident property owner or owner's representative? (6.5)

Auditor Conclusion

The "resident property owner" in this case is TLC. However, because the sale and future use of the property impacted owners of property abutting the rail corridor, area residents had the opportunity to comment on the proposed project. Citizens had the opportunity to voice their opinions at hearings conducted by the Issaquah City Council and the Metropolitan King County

Council. Meetings were also held and attended by area residents, adjacent property owners, concerned citizens, and county representatives. The project has drawn both support and opposition from area residents.

Question 10 Did the Project Administrator provide the owner of the property to be acquired with (6.6):

- A brief explanation of the acquisition project?
- An identification of the realty and/or property rights to be acquired?
- A written statement of, and summary of the basis for, the amount the county has established as just compensation for the proposed acquisition?
- The amount to be paid for damages to the remaining property?

Auditor Conclusion

King County and the property owner, TLC, have been involved in the project since its inception. What is required in these policies is described in the “Agreement for the Transfer of Certain Assets. Rights and Obligations of the land Conservancy of Seattle and King County to King County, Washington” and the appraisal report by Bruce C. Allen & Associates.

Question 11 Was the compensation offered to the property owner not less than the amount set by the division’s fair market appraisal? (6.8)

See discussion in Question 1 and Finding 2.

Question 12 Was the transaction closed in escrow? (6.12)

The purchase from TLC was closed using an in-house escrow officer. The escrow officer is an employee of the Open Space Section and is licensed to practice. This saved the county the

cost of getting and outside escrow. Payment was not held in escrow. Payment was wired to TLC.

Auditor Conclusion

Based on our evaluation of documents and interviews with individuals directly involved with this transaction, it is our opinion that the procedure followed in the acquisition of the BNSF property from TLC was substantially in conformance with county policies and procedures.

RECOMMENDATION

None.

FINDING 2

THE PROPERTY APPRAISAL APPEARS TO HAVE BEEN CONDUCTED PROFESSIONALLY AND INDEPENDENTLY. WHILE THE PURCHASE PRICE IS ALMOST DOUBLE THE PRICE PAID BY TLC TO THE BNSF, THE PURCHASE PRICE IS STILL SIGNIFICANTLY BELOW THE APPRAISED PROPERTY VALUE.

King County paid the Land Conservancy of Seattle & King County (TLC) \$2,988,500. In addition, TLC retained the rights to the track and ties, worth approximately \$375,000 in salvage value.

Appraisal

The firm of Bruce C. Allen & Associates conducted the appraisal of the East Lake Sammamish BNRR Corridor. The property was appraised at \$13,970,000, as of July 15, 1997.⁶ The appraisal was made in compliance with the reporting requirements set forth under Standard Rule 2-2(b) of the Uniform Standards of Professional Appraisal Practice (USPAP) for a Summary Appraisal report (DPP 5.7).

⁶ Bruce C. Allen, MAU, CRE and Darin A. Shedd, Associate, Summary Appraisal Format – Complete Appraisal of East Lake Sammamish BNRR Corridor, Bruce C. Allen & Associates, Inc., July 15, 1997,

Review Appraiser

The Review Appraiser is responsible for assigning and reviewing all appraisals and ensuring all appraisals are completed in compliance with all relevant state and county policies and procedures and with accepted appraisal practices. The Review Appraiser's review of the BNRR appraisal by Bruce C. Allen is documented in the "Review Appraiser's Certification and Analysis."

Assessed Value

The total value for the parcels per the Assessor's valuation was \$10,632,900.

TLC purchased the property from BNSF for \$1,500,000 on August 14, 1998. The difference in TLC acquisition cost and the selling price to King County is attributed to expenses incurred by TLC. These costs included TLC's staff and legal costs for property management, negotiations with adjacent property owners, enforcement of property rights against encroachment and abuses of right-of-way, pursuit of the rail banking process in Washington, D.C., purchase loan interest cost, transaction and closing costs, taxes, and issuing permits for use of the right-of-way by third parties.

King County's purchase price of about \$2.99 million was about 21% of the appraised value of the property and 199% of the amount paid by TLC to BNSF. The price paid by TLC, and ultimately by King County, for the BNSF property was significantly below the appraised value. However, the sale was considered a "donation sale" which provides for some tax benefit to BNSF.

A donation sale means sale of property at less than "fair market value," or outright donation. By putting the terms "donation sale" in the purchase contract, both parties are acknowledging that the price was discounted, or less than fair market value. The county has acquired a number of properties where the seller wanted

less for the property than the appraisal. The most recent was a 6.67 acre parcel on the Cedar River. The property was appraised at about \$200,000, but it was acquired by King County for \$1,500.

Auditor Conclusion

It is our opinion that the appraisal of the property was conducted professionally and independently. Notwithstanding the obvious premium paid by the county over the amount paid by TLC to BNSF, the sale price is substantially below the appraised value of the property. TLC had the right to sell the property to the county at any price it wanted. The county of course also had the right to offer to buy at its price. The willingness by both seller to sell and buyer to buy the property at \$2.99 million is indicative of an agreement. Whether, the property could have been obtained from the TLC for a lower price is subject to speculation.

RECOMMENDATION

None.

APPENDICES

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APPENDIX 1

King County Department Policies and Procedures Acquisition Procedures



King County
Department Policies and Procedures

General Department
Policies & Procedures

Title	Document Code No.
Acquisition Procedures	PAR 1-17 (DP)
Department/Issuing Agency	Effective Date
Parks Division Office of Open Space	6/15/93
Approved	

- 1.0 **SUBJECT TITLE:** Open Space and Conservation Easement Acquisition Policy and Procedures
- 1.1 **EFFECTIVE DATE:** Immediately upon authorized signature
- 1.2 **TYPE OF ACTION:** Establish "King County Office of Open Space Acquisition Procedures"
- 2.0 **PURPOSE:** To highlight key acquisition policies and guidelines as promulgated by K.C.C. Ordinance 9444 and to fulfill the directives in K.C. Ordinance 9071. (Nothing included in this Policy or not included substitutes for or relieves the Office of Open Space staff from following all relevant Federal and State rules.)
- 3.0 **AUTHORITY:** Ordinance 9444; K.C.C. 4.56.060
- 4.0 **REFERENCES:**
- 4.1 Washington State Interagency Committee for Outdoor Recreation Manual 3: Guidelines for Land Acquisition, Manual 5: Application Procedures, Manual 7: Procedures for Funded Projects, Manual 8: Project Reimbursements, and Manual 10: Washington Wildlife and Recreation Program Guidelines.
- 4.2 Washington State Department of Transportation Right of Way Manual (M26-01 Volumes 1 and 2).
- 4.3 Title 23, Code of Federal Regulations (CFR)
- 4.4 RCW 8.04 and 8.25, Eminent Domain.
- 4.5 RCW 8.26; WAC 365-24, Property Acquisition Policies and Regulations.

APPENDIX 1 (Continued)

4.6 **RCW 18.140 and WAC 308-125, Real Estate Appraisers** minimum requirements for State Certification.

4.7 **K.C.C. 4.16**

5.0 **DEFINITIONS:**

- 5.1 **Administrative Settlement:** Any settlement made, or authorized to be made, by the office's responsible authority which is in excess of just compensation as established by the review appraiser.
- 5.2 **Condemnation:** A judicial or administrative proceeding to exercise the power of eminent domain; in the case of this office, the power of the County to take private property for public use. The County is the condemnor and the person whose property is being taken, either partially or entirely, is the condemnee. In the taking of private property for public use, a fee simple estate or any lesser right, such as an easement, may be acquired.
- 5.3 **Abandonment:** An action, by ordinance of the King County Council, to terminate an acquisition project after a determination and finding of fact that changes in conditions or new information developed after authorization of the project prevent the practical accomplishment of the project, or clearly indicate that the project would no longer best serve its intended purpose.
- 5.4 **Market Value:** The highest price, estimated in terms of money, which a property will bring if exposed for sale in the open market, allowing a reasonable time to find a purchaser who buys with knowledge of all the uses to which the property is adapted and for which it is capable of being used; often referred to as the price at which a willing and informed seller would sell and a willing and informed buyer would buy, neither being under any pressure to act.
- 5.5 **Just Compensation:** An amount of compensation as determined by an appraisal or a decision of a court, to be received by a party for the taking of his property.
- 5.6 **Appraiser:** A person who develops and communicates real estate appraisals and who holds a valid certificate issued to him/her for general real estate appraisals under the requirements set forth in RCW 18.140. Such requirements include but are not limited

APPENDIX 1 (Continued)

to a specified number of hours of classroom instruction in subjects related to real estate appraisal, including a course in Uniform Standards of Professional Appraisal Practice, at least two years of acceptable appraisal work experience, and passing a state-administered examination. May be a member of Appraisal Institute and/or International Right of Way Association and hold designations of SRPA, SRA or SR/WA.

- 5.7 **Appraisal and Appraisal Report:** An appraisal is the process of formulating, supporting and communicating an opinion of value. It is an estimate, not a determination of value. An appraisal may be in the form of a completed form, a simple letter or even an oral report. An appraisal report prepared in accordance with the Uniform Standards of Appraisal Practice contains the definition of value to be applied, the estimate and effective date of the valuation, the appraiser's signature and certifications and limiting conditions, description of the property and rights being appraised, general and specific jurisdiction to support the value estimate, consideration of each of the three approaches; and the reconciliation.
- 5.8 **Funding Feasibility Study:** A form to provide information to Interagency Committee for Outdoor Recreation (IAC) as a basis for funding a project, for identifying parcels needing in-depth appraisal, and forming a basis for fair transactions. This is a parcel by parcel estimate of expected acquisition costs which is completed by an appraiser, a review appraiser, and other specialists as necessary in order to determine the gross costs of acquisition for a given project. It is used to obtain authorization and funding for a project and is based upon current market data and project plans.

6.0 POLICIES:

- 6.1 Every reasonable effort shall be made to acquire real property expeditiously and by negotiations.
- 6.2 Each parcel to be acquired shall be appraised following the "Standard Narrative Form Appraisal Report," as set forth in Chapter 4 of the Washington State Department of Transportation (WSDOT) Right of Way Manual or IAC specifications for Standard Appraisal Forms (Appendix F & G, Manual #3). Then each parcel shall be reviewed by a Review Appraiser.

APPENDIX 1 (Continued)

6.2.1 Exceptions to this policy may be allowed when:

- (a) A finding of value estimate has determined the just compensation to be \$5000 or less;
- (b) The review appraiser has determined a "Short Form Narrative-Type Appraisal Report" is appropriate because the evaluation is uncomplicated;
- (c) The review appraiser has determined a "Minimal Value Appraisal Report" is appropriate because the estimated just compensation is \$25,000 or less. Appraisals involving severance damages, special benefits, proximity damages, or other complex issues may not use this format.

6.3 A separation of functions shall be maintained in order to preserve the integrity of acquisition transactions. Thus, the appraisal, the appraisal review, and the negotiations for each parcel shall be performed by three different persons.

6.3.1 Exceptions to this policy may be allowed when the estimate of value is \$5000 or less, except that the review appraiser may not also be the negotiator.

6.4 Negotiations shall not be initiated until just compensation has been established.

6.5 The Project Administrator shall make all reasonable efforts to make personal contacts with each resident property owner or the owner's representative.

6.6 Upon initiation of negotiations, the Project Administrator shall provide the owner of the property to be acquired with a brief explanation of the acquisition project; an identification of the realty and/or property rights to be acquired; a written statement of, and summary of the basis for, the amount the County has established as just compensation for the proposed acquisition; and, when applicable, the amount to be paid for damages to the remaining property, stated separately.

6.7 Negotiations shall be conducted without any attempt to coerce the property owner into signing an agreement. Condemnation as a threat shall be avoided.

APPENDIX 1 (Continued)

6.8 In no event shall the compensation offered the property owner be less than the amount set by the division's fair market appraisal.

6.9 When negotiations are unsuccessful and the OOS Administrator determines further attempts to negotiate agreement to purchase based upon just compensation are futile, administrative settlement, a condemnation action, or an abandonment shall be pursued.

6.9.1 Administrative Settlement

The purchase price for a property to be acquired may exceed the amount offered as just compensation when reasonable efforts to negotiate on that amount have failed and the Office of Open Space Administrator approves an administrative settlement as being reasonable, prudent, and in the public interest, provided that the settlement will not jeopardize remaining acquisitions on the project.

6.9.2 Condemnation

No parcel may be recommended for condemnation until all reasonable effort has been made to respond to the property owner's concerns. The Project Administrator must have attempted in good faith to meet with the owner or the owner's designee a *minimum* of three times to discuss the County's offer, although it is likely that more than three contacts will be customary and necessary. (Telephone calls to an owner to set up appointments do not count as meetings unless the owner refuses to or is unable to grant an appointment.) If the OOS Administrator determines, in consultation with and the approval of the Parks Division Manager or designee, that condemnation of a project is appropriate, then he or she shall make such a recommendation to the Executive for Council action.

6.9.2.1 Exceptions to this policy may be allowed when the owner/owner's designee rejects all negotiation attempts and instructs the Project Administrator to condemn or when the owner is abusive and/or orders the Project Administrator off the property.

6.9.3 Abandonment

Abandonment of an acquisition project requires a

APPENDIX 1 (Continued)

determination and finding of fact by the King County Council that changes in conditions or new information developed after authorization of the project prevent the practical accomplishment of the project and/or clearly indicate that the project would no longer best serve its intended purpose. If the OOS Administrator determines, in consultation with and the approval of the Parks Division Manager or designee, that abandonment of a project is appropriate, then he or she shall make such a recommendation to the Executive for Council action.

- 6.10 If acquisition is carried out under a program for which a body other than the King County Council (Such as the King County Office of Open Space Citizen Oversight Committee for the 1989 Open Space Bond) must make a recommendation regarding abandonment or condemnation then the OOS Administrator in consultation with and the approval of the Parks Division Manager or designee shall make a recommendation to such body to pursue or administrative settlement, condemnation, or abandonment for their review and decision.
- 6.11 If such body recommends condemnation or abandonment OOS Staff shall prepare the necessary draft legislation, background information and cover letter, forwarding the recommendation via the Parks Division Manager, the Director of the Parks, Planning and Resources Department and the Executive, to the King County Council for its consideration and action.
- 6.12 Transactions shall be closed in escrow when there is a substantial acquisition.
- 6.13 The owner shall not be required to surrender possession of the property to be acquired until payment for it is made.

7.0 RESPONSIBILITIES

- 7.1 **Parks Division Manager** or designee is responsible generally for supervising the OOS Administrator and in particular for consulting with the OOS Administrator regarding and approving Parks Division recommendations for condemnation and abandonment.
- 7.2 **The Office of Open Space Administrator** is responsible for overseeing the work of the office, for establishing

APPENDIX 1 (Continued)

polices and procedures to guide the work of the office, for ensuring that the office's client agencies and the public are well served and for making recommendation in consultation with and with the approval of the Parks Division Manager regarding recommendations for condemnation, administrative settlement and abandonment.

- 7.3 **The Program Analyst** is responsible for checking the closing documents, preparing requests for payment and assuring that the requests are properly documented and accurate. Verifies the project balance for sufficient funds.
- 7.4 **The Acquisition Supervisor** is responsible for supervising the work of the Acquisition Group (Project Administrator, Title and Escrow Officer and Review Appraiser), for ensuring that all acquisitions are completed in compliance with all relevant Federal, State and County rules and regulations, and for informing the OOS Administrator of any unusual problems that arise related to acquisition.
- 7.5 **The Project Administrator** is responsible for overseeing that title and appraisal work on parcels to which he or she is assigned is done in an appropriate and timely manner. Prepares the offer, and negotiates in good faith the purchase of interests in property. Keeps Acquisition Supervisor informed of status of work.
- 7.6 **The Review Appraiser** is responsible (pursuant to applicable King County procurement procedures) for assigning and reviewing all appraisals and ensuring all appraisals are completed in compliance with all relevant State and County policies and procedures and with accepted appraisal practices.
- 7.7 **The Title and Escrow Officer** is responsible for reviewing the title reports and drafting legal descriptions. Prepares contracts, condemnation ordinances, purchase and sale agreements and associated documents. Coordinates closing with escrow company; reviews and approves escrow closing documents.

APPENDIX 1 (Continued)

8.0 PROCEDURES:

<u>Responsibility</u>	<u>Action</u>
Acquisition Supervisor	8.1 Reviews acquisition project and staffing load. Prepares project time-line and assigns project to project administrator.
Project Administrator	8.2 Upon assignment, reviews acquisition project, requests title and escrow officer to order title reports and notifies appraiser of time line for appraisals.
Title and Escrow Officer	8.3 Upon request from Project Administrator assigns parcel numbers, orders title reports, enters order in Title & Escrow log.
Title and Escrow Officer	8.4 Upon receipt of title report, logs receipt, reviews report and places one copy in parcel file and the remaining copies in the T&E file cabinet. Highlights problem areas in writing to Project Administrator with copy to Review Appraiser.
Project Administrator and Review Appraiser	8.5 Makes drive-by inspections of parcels to be acquired to note any apparent appraisal or negotiating issues. Discusses ways to reconfigure acquisition to eliminate or reduce any identified problems.
Review Appraiser	8.6 After following applicable standard King County procurement procedures (K.C.C. 3.04, 4.16, 4.18, 10.16, 12.16, 12.18) assigns parcels for appraisal to King County staff appraisers or qualified contract appraisers, depending upon workload and anticipated appraisal problems.
Appraiser	8.7 Contacts property owner by letter or telephone to request permission to enter property for purpose of performing an appraisal. Briefly explains the project and invites owner to accompany him/her in the property inspection.

APPENDIX 1 (Continued)

Responsibility	Action
Appraiser	8.8 Performs appraisal according to the established uniform standards of professional appraisal practice and ethical conduct.
Review Appraiser	8.9 Reviews appraisal for conformance to any special instructions issued and for conformance to format as outlined in "The Appraisal Report Guide," Chapter 4, WSDOT <u>Right-of-Way Manual</u> and/or the Washington State Interagency Committee (IAC) Manual #3, 03.29. Either accepts or rejects the appraised value as the County's just compensation offer for the property to be acquired. If rejects, obtains another appraisal.
Project Administrator	8.10 Reviews parcel file. Thoroughly familiarizes him/herself with appraisal. Studies all details of the property, title reports, and legal descriptions.
Project Administrator	8.11 Assigns preparation of appropriate conveyance (Purchase and Sale Agreement or Option) to Title & Escrow Officer.
Title & Escrow Officer	8.12 Prepares appropriate conveyance instruments. Assigns document typing to T&E Secretary, proofs and approves final version.
Project Administrator	8.13 Prepares written offer letter to property owner which includes a brief <u>explanation of the project</u> , an <u>identification of the property/property rights</u> the County wishes to acquire, the amount the County has established as <u>just compensation</u> as well as a statement explaining that the offer is based upon <u>an appraisal and an appraisal review</u> by a state certified appraiser, the identification of any improvements or fixtures considered to be part of the real property to be acquired and, when appropriate, the amount of compensation <u>for damages</u> , stated separately, to the remaining real property. The conveyance instruments shall be an attachment to the offer letter.

APPENDIX 1 (Continued)

<u>Responsibility</u>	<u>Action</u>
Project Administrator	8.14 Reviews offer with Acquisition Supervisor.
Acquisition Supervisor	8.15 Reviews offer with OOS Administrator.
OOS Administrator	8.16 If satisfactory, executes offer letter and instruments.
Acquisition Supervisor	8.17 Has offer notarized, returns signed offer to PA for delivery to property owner.
Project Administrator	8.18 Makes appointment with property owner/owner's designee to discuss project, to deliver offer letter (if not previously mailed), to answer questions about the County's offer and to open negotiations.
	8.18.1 Meets property owner on site whenever practical. Inspects property with owner to ensure owner and County that negotiations are based upon first-hand knowledge of property to be acquired and to ensure that the owner's interests and concerns are adequately addressed.
	8.18.2 Corresponds by certified mail, return receipt requested, with non-resident property owners who live too far from property to make face-to-face negotiations practical and when owners have not appointed a designee. Attempts telephone contact, when feasible.
Project Administrator	8.19 Maintains a record (diary) of all contacts with owner/designee regarding the property to be acquired, being especially meticulous about recording the owner's reaction to the County's offer and the details of any counteroffer(s).

APPENDIX 1 (Continued)

<u>Responsibility</u>	<u>Action</u>
Project Administrator	8.20 Allows property owner reasonable opportunity to consider the County's offer, to obtain professional advice, to present material which the owner believes is relevant to determining the value of (or damages to) the property and to suggest modifications to the terms and conditions of the purchase.
Project Administrator	8.21 Reviews and responds to any and all additional factors which come to light that could affect just compensation. Discusses with Acquisition Supervisor and Review Appraiser when new evidence exists. Has title and escrow officer revise offer commensurate with new evidence as appropriate and as approved by review appraiser.
Project Administrator	8.22 Updates Acquisition Supervisor weekly to reflect status of negotiations and notifies program analyst of amounts committed to parcel acquisition.
Acquisition Supervisor	8.23 Updates the OOS Administrator weekly.
Project Administrator	8.24 Continues negotiations until either:
	8.24.1 <u>A Satisfactory Settlement is Reached</u>
Project Administrator	8.24.1.1 Obtains and notarizes owner's signature on the instruments of conveyance.
Project Administrator	8.24.1.2 Ensures that contact sheet is complete, signed, and dated. Reviews file for completeness and compliance to State and County acquisition policies and procedures. Requests Title & Escrow Officer to establish escrow.

APPENDIX 1 (Continued)

<u>Responsibility</u>	<u>Action</u>	
Title & Escrow Officer	8.24.1.3	Reviews file to ensure that good and clear title will be conveyed to the County. If errors are discovered, returns to appropriate person for corrective action. Writes escrow instructions to escrow company and records escrow establishment in title & escrow log.
Title & Escrow Officer	8.24.1.4	Reviews closing documents from escrow company, notifies project administrator of any problems or delays. Prepares request for warrant and gives to program analyst for processing.
Program Analyst	8.24.1.5	Reviews request for warrant and attached documentation. Prepares record of contract and payment voucher for appropriate amount and transmits to Finance Division.
Project Administrator	8.24.1.6	Reviews closing documents for appropriate terms, conditions and title.
OOS Administrator	8.24.1.7	Reviews and signs closing and escrow documents.
Title & Escrow Officer	8.24.1.8	Obtains warrant from program analyst and transmits warrant and closing documents to escrow company. Ensures documents are recorded. Maps acquisition on Kroll map. Notes closing acreage, milage and purchase price on closed parcels list.
Title & Escrow Officer	8.24.1.9	Prepares memo to Parks Division with details of property acquisition and transmits to Parks Division.
Title & Escrow Officer	8.24.1.10	Reviews title policy and final escrow settlement statement, files original deed, transmits file to Property Services.

APPENDIX 1 (Continued)

<u>Responsibility</u>	<u>Action</u>
Acquisition Supervisor	8.24.1.11 Ensures all required documentation is in file.
	8.24.2 <u>A Settlement Cannot Be Reached</u>
Project Administrator	8.24.2.1 Informs Acquisition Supervisor that all attempts at negotiating a settlement have been unsuccessful and explains why.
Acquisition Supervisor	8.24.2.2a Reviews all information relevant to attempts to arrive at a negotiated settlement including but not limited to the basis for the owner's refusal of the County's just compensation offer. Ensures all reasonable counteroffers, requests, demands, if any, have been explored and, if feasible, satisfied. Discusses outstanding issues with Project Administrator. Talks to owner or has Project Administrator continue negotiations if believes further negotiations are merited and/or could lead to a successful conclusion
	or
Acquisition Supervisor	8.24.2.2b Determines whether to recommend to OOS Administrator an administrative settlement or to recommend condemnation or abandonment. Weighs, among other factors, chance of success in court and/or the precedent established by meeting the owner's demands against the cost of making an administrative settlement. Also proposes amount of settlement.
OOS Administrator	8.24.2.3 Determines, in consultation with and upon the approval of the Parks Division Manager or designee, whether to make an administrative settlement or to recommend condemnation or abandonment. If administrative settlement is chosen, determine amount.

APPENDIX 1 (Continued)

<u>Responsibility</u>	<u>Action</u>	
	8.25	<u>Administrative Settlement</u>
Acquisition Supervisor	8.25.1	If the OOS Administrator, in consultation with and with the approval of the Parks Division Manager or designee, determines that an administrative settlement is in the best interests of the County, determine amount to be offered in administrative settlement, and the OOS Administrator writes memo to file stating amount to be paid above the just compensation and the reason for the administrative settlement. Prepares offer letter stating proposed settlement.
OOS Administrator	8.25.2	Signs settlement offer letter.
Project Administrator	8.25.3	Make settlement offer by mail or in person by delivering settlement offer letter. If offer accepted, follows procedures outlined in 8.24.1.1 thorough 8.24.1.10.
	8.26	<u>Condemnation or Abandonment</u>
Acquisition Supervisor	8.26.1	If OOS Administrator, in consultation with and the approval of the Parks Division Manager or designee, determine that condemnation or abandonment appear to be the only viable alternatives, instructs the negotiator to prepare letter to property owner informing him/her that a condemnation or abandonment action will be recommended.
Project Administrator	8.26.2	Prepares letter for OOS Administrator summarizing what County believes to be the issues on which the owner and County cannot agree. Gives property owner two weeks to respond to clarify any misunderstandings or settle.

APPENDIX 1 (Continued)

<u>Responsibility</u>	<u>Action</u>	
OOS Administrator	8.26.3	Reviews circumstances, approves and signs letter, and returns it to Project Administrator for mailing.
Project Administrator	8.26.4	When cut-off date arrives, informs Title & Escrow Officer of all parcels for which a settlement have not been reached.
Title & Escrow Officer	8.26.6	Prepares condemnation or abandonment ordinance. If unsuccessful negotiation affects only a portion of a project, prepares scope change memorandum and transmits to Council via the Executive, after review and in concurrence with COC recommendation.
Project Administrator	8.26.7	Ties up any loose ends, including concluding negotiations, if such is possible, until condemnation or abandonment ordinance or scope change instrument is passed or approved by Councilor Parks, Open Space and Natural Resources Committee Chair and, if applicable, transmitted to the Prosecuting Attorney's Office. If applicable, turns over all information to Prosecuting Attorney, contacting the property owner only if requested by the Prosecuting Attorney.

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APPENDIX 2

King County Executive Response



King County Executive
RON SIMS

June 2, 1999

Don Eklund
King County Auditor
Room 402
C O U R T H O U S E

RECEIVED

JUN 04 1999

KING COUNTY AUDITOR

Dear Mr. Eklund:

Thank you for the draft report titled "Special Study: East Lake Sammamish Trail," in which you concluded that appropriate property acquisition procedures appear to have been adhered to and that the property appraisal appears to have been conducted professionally and independently. My staff and I have reviewed and agree with your findings.

We note that your report does not recommend changes in our property acquisition methods. However, we will always remain alert to opportunities to strengthen our business practices.

Please express my appreciation to your staff for this effort.

Sincerely,

A handwritten signature in black ink, appearing to be "Ron Sims", written over a circular stamp or mark.

Ron Sims
King County Executive

cc: Paul Tanaka, Deputy County Executive
Pat Steel, Director, Office of Budget
Craig Larsen, Director, Department of Parks
Pam Bissonnette, Director, Department of Natural Resources
David Lawson, Manager, Executive Audit Services

KING COUNTY COURTHOUSE 516 THIRD AVENUE, ROOM 400 SEATTLE, WA 98104-3271
(206) 296-4040 296-0194 FAX 296-0200 TDD E-mail: ron.sims@metrokc.gov

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